

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DIANOIA’S EATERY, LLC d/b/a  
DIANOIA’S and PIZZERIA DAVIDE,

Plaintiff,

v.

MOTORISTS MUTUAL INSURANCE  
COMPANY,

Defendant.

Civil Action No. 2:20-cv-00787-NBF

Hon. Nora Barry Fischer

**MOTION FOR RECONSIDERATION AND AMENDMENT OF REMAND ORDER**

NOW, comes Defendant, Motorists Commercial Mutual Insurance Company (“Motorists”), by and through its attorneys, BURNS WHITE LLC, and files this Motion for Reconsideration and Amendment of Remand Order.

1. The instant matter relates to Plaintiff’s claim for insurance coverage for damage and loss allegedly caused by the COVID-19 virus, pandemic, and related governmental orders. (See Compl. [Doc. 1-1], *generally*.)

2. Plaintiff filed its action in the Court of Common Pleas of Allegheny County, and Motorists Removed the action to this Court based on the Court’s diversity jurisdiction. (See Compl. [Doc. 1-1], *generally*; Notice of Removal [Doc. 1], *generally*.)

3. Plaintiff has conceded diversity and has not challenged the amount in controversy. (See Mot. to Remand [Doc. 8] ¶ 4, *generally*.)

4. By its Motion to Remand, Plaintiff sought to have this Court decline to exercise its jurisdiction, arguing that the Court’s jurisdiction is discretionary. (See Mot. to Remand [Doc. 8] ¶¶ 28-33.)

5. On August 27, 2020, by its Remand Order, the Court granted Plaintiff's Motion to Remand, declining to exercise its jurisdiction pursuant to the Declaratory Judgment Act ("DJA"). (See Order, Aug. 27, 2020 [Doc. 19], pp. 1-2.)

6. In doing so, the Court remanded the action to the Court of Common Pleas of Allegheny County, and ordered the Clerk of Courts to close the case and serve a certified copy of the Court's Order on the Prothonotary. (Id., p. 2.)

7. Motorists submits that in so doing the Court has prematurely ordered the remand and closing of the federal court action, inconsistent with the continuing jurisdiction of the federal courts and Motorists' right to appeal, irrespective of the status of any certified order to the Court of Common Pleas of Allegheny County.

8. The Court's Remand Order predicated on the declination of discretionary jurisdiction is appealable to the Third Circuit. Reifer v. Westport Ins. Corp., 751 F.3d 129 (3d Cir. 2014).

9. For the reasons more fully set forth in Motorists' Brief, which is incorporated herein by reference, neither the Remand Order predicated on the declination of discretionary jurisdiction (to which 28 U.S.C. § 1447(d) is inapplicable), nor the mailing of the remand order divests the district court of jurisdiction. See Reifer, supra, Quackenbush v. Allstate Insurance Co., 517 U.S. 706, 713–15, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996), In re U.S. Healthcare, 159 F.3d 142, 146 (3d Cir.1998), Rarick v. Federated Service Insurance Company, 2:13-cv-03286 (Order, March 4, 2016) (Order and Docket Excerpt attached hereto at Exhibits 1 & 2), Hudson United Bank v. LiTenda Mortg. Corp., 142 F.3d 151, 158 (3d Cir. 1998), J.O. v. Alton Community Unit Sch. Dist. 11, 909 F.2d 267, 273–274 (7th Cir.1990).

WHEREFORE, where the Court's Remand Order remains subject to appeal to the Third Circuit, § 1447(d) is inapplicable, and the Court retains jurisdiction following the entry of a remand order founded on discretionary jurisdiction pursuant to the DJA, Motorists respectfully requests that the Court amend its order and/or enter an Order consistent with Motorists proposed order directing the Clerk of Courts to refrain from remanding this matter and sending the Remand Order to the Allegheny County Prothonotary and clarifying that jurisdiction remains with the district court pending appeal.

Respectfully submitted,

BURNS WHITE LLC

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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on August 28, 2020, the within **MOTION FOR RECONSIDERATION AND AMENDMENT OF REMAND ORDER** was filed electronically and will be served upon all counsel via the Court's ECF System. The Parties may access this filing through the Court's system.

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